IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 258 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARISH PUNJALAL BAROT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 258 of 2004

MR HIMANSHU K PATEL for Petitioner No. 1

RULE SERVED for Respondent No. 1,2

MS AC RAVAL, AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 23-12-2003. By

the said order, the petitioner is detained as a "bootlegger" under P.A.S.A. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about one criminal case dated 1-12-2003, pending against the petitioner. The said case is registered under Sections 66 (1) B and 65, E-A and Section 81 of the Bombay Prohibition Act. The petitioner was found to be in possession of certain bottles of illicit Indian made foreign liquor. After considering the pending case and the statement of secret witnesses, the aforesaid detention order was passed.

2) Learned advocate for the petitioner submitted that the petitioner is not a habitual offender and is found to be involved only in one criminal case. It is submitted by him that the alleged incident is in connection with dealing in Indian made foreign liquor, which, according to the learned advocate for the petitioner, cannot be said to be harmful to public health. To substantiate his say, learned advocate for the petitioner has relied upon one unreported judgement of a learned Single Judge of this Court delivered in Special Civil Application No.16541/2003 on 26/02/2004. It is also submitted by the learned advocate for the petitioner that identical situation was dealt with in the case of Sandip Omprakash Gupta Vs. State of Gujarat vide judgement reported in 2004 (1) GLR 864. In the said decision, a solitary offence under the Bombay Prohibition Act was registered against the detenu and the authority relied on two other unregistered offences based on statements of certain witnesses and, therefore, a learned Single Judge of this Court, on the facts of that case, held that the detenu could have been dealt with under the ordinary criminal law and the order of detention passed therein, treating the petitioner as a bootlegger, was set aside. Since I am bound by the view taken by the learned Single Judge, in view of the aforesaid stand about a solitary case registered under the Bombay Prohibition Act and on the basis of the aforesaid submission about a solitary case lodged against the petitioner, which can be taken care under the ordinary criminal law, this petition is required to be allowed.

3) Since the present case is also similar to the one referred above, as the petitioner is detained only on the basis of a solitary case, this petition is required to be allowed as it cannot be said that it is a case of breach of public order.

4) For the foregoing reasons, this petition is

allowed. The order of detention dated 23-12-2003 is quashed and set aside. The detenu, Shri Harishbhai Punjalal Barot is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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